IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 263

YOU-WAY MARKETS, a corporation, and E. W. KENNEDY,

Petitioners,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through the Department of Public Works,

Respondent.

PETITIONERS' REPLY BRIEF.

JOSEPH M. McLAUGHLIN,
1224 Bank of America Bldg.,
650 South Spring Street,
Los Angeles 14, California,
Attorneys for Petitioners.

JAMES A. McLAUGHLIN,
LAWRENCE P. CASEY,
1224 Bank of America Bldg.,
650 South Spring Street,
Los Angeles 14, California,
Of Counsel.

Parker & Son, Inc., Law Printers, Los Angeles, Phone MA 6-9171

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PETITIONERS' REPLY BRIEF.

I.

There Is No Adequate and Substantial Non-Federal Ground.

An examination of the opinion of the California Supreme Court will show that the Court exhaustively considered and discussed the federal ground of denial of access (Appx. pp. 27-32), but treated the so-called non-federal ground in one short paragraph.[1] It should also be noted that the California Supreme Court does not

[1]Appendix, page 32.

even base any part of its decision on the stipulation, but in a rather off-hand way states:

> "It should be mentioned that even if appellants were entitled to damages for impairment of their right of access, these damages were *apparently* included in the amount stipulated to by the parties."[2] (Emphasis added.)

The Court, it can be seen, does not base any decision on that ground, but states in effect that "apparently" it might do so.

This should be compared with the decision of the California Appellate Court in which the specific question of the effect of the stipulation was passed upon. That Appellate Court, after giving the matter careful consideration, specifically held that the stipulation did not include this matter of denial of right of access.[3]

This Court has held on numerous occasions that before it will be ousted of jurisdiction, the state court decision must be based on an adequate and substantial non-federal ground.[4] Certainly, the cursory treatment of the stipulation by the State Supreme Court could not be an adequate and substantial ground on which to base such an important decision. Moreover, this Court has held

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[2] Appendix, page 32

[3] Appendix, pages 14 and 15.

[4] *Lawrence v. State Tax Commission of Mississippi*, 286 U. S. 276 at 282, 52 S. Ct. 556, 76 L. Ed. 1102; *Broad River Power Co. v. State of South Carolina*, 281 U. S. 537 at 539, 50 S. Ct. 401, 74 L. Ed. 1023; *State v. Brand*, 303 U. S. 95 at 98 and 99, 58 S. Ct. 443, 82 L. Ed. 685; *Abie State Bank v. Weaver*, 282 U. S. 765 at 773, 51 S. Ct. 252, 75 L. Ed. 690; *Fox River Paper Co. v. Railroad Commission*, 274 U. S. 651 at 653, 47 S. Ct. 669, 71 L. Ed. 1279.

that whether a decision is based on a non-federal ground is itself a federal question.[5] This Court should grant certiorari for the many reasons set out in the Petition, and on a full hearing can see that this entire matter was tried, as the California Appellate Court states,[6] on the basis that the question of damage to the right of access had been reserved by the stipulation, and was being decided.

Conclusion.

In this case the California Supreme Court based its decision on the question of right of access. Right of access is a property right and petitioners are entitled to damages. As pointed out in the petition, this extremely important question of access to highways should be reviewed by this Court, and the instant case is excellently suited for that purpose.

Respectfully submitted,

JOSEPH M. MCLAUGHLIN,
Attorney for Petitioners.

JAMES A. MCLAUGHLIN,
LAWRENCE P. CASEY,
Of Counsel.

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[5] *Lovell v. City of Griffin, Ga.*, 303 U. S. 444 at 450 and 452, 58 S. Ct. 666, 82 L. Ed. 949.

[6] Appendix, page 15.